

**UNITED STATES COURT OF APPEALS**

**OCT 17 2001**

**TENTH CIRCUIT**

**PATRICK FISHER**  
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FERNANDEZ SANDOVAL,

Defendant - Appellant.

No. 01-2140

(D.C. No. CIV-98-1236 JP/KBM)

(D. New Mexico)

**ORDER AND JUDGMENT\***

Before **SEYMOUR** and **McKAY**, Circuit Judges, and **BRORBY**, Senior Circuit Judge.

After examining the briefs and the appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

This is an appeal from a § 2255 motion directed exclusively to a claim of ineffective assistance of counsel. After an extensive evidentiary hearing and full briefing, the magistrate judge recommended that the motion be denied. The trial

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\*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

court adopted the magistrate judge's report and dismissed with prejudice. It also denied a certificate of appealability. Appellant has renewed his request in this court.

The issue was well briefed on appeal by Appellant's counsel. The government did not file a brief.<sup>1</sup> We have reviewed the brief on appeal. No challenge is made to the findings of fact proposed by the magistrate judge—only the conclusion that the facts do not satisfy the requirements of Strickland v. Washington, 466 U.S. 668 (1984).

After full consideration, we agree with the conclusions reached by the magistrate judge as adopted by the trial court. We can add nothing of significance to the thorough opinion of the magistrate judge.

We grant the certificate of appealability and affirm the trial court's order dismissing the action with prejudice.

AFFIRMED.

Entered for the Court

Monroe G. McKay  
Circuit Judge

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<sup>1</sup>We deny Appellee's "Motion to Stay Requirement that the Government File Its Answer Brief Pending Ruling on Appellant's Application for Certificate of Appealability" as moot.